

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

GABRIELA NIEVES,)	
)	
Plaintiff,)	
vs.)	Cause No. 1:20-cv-00320-JMS-DML
)	
CARMEL CLAY SCHOOLS,)	
CHRIS PLUMB, JOHN GOELZ, and)	
RED ROOF INN,)	
)	
Defendant.)	

MOTION TO DISMISS CHRIS PLUMB

1. Under Indiana's Tort Claims Act, more specifically Ind. Code § 34-13-3-5(b), public employees may not be sued for acts or omissions occurring in the scope of their employment.
2. Further, the scope of a public employee's employment is broadly construed to include even criminal or intentionally tortious acts that are "incidental" to employment.
3. The complaint alleges that Mr. Plumb is an "employee/agent/representative of the Carmel Clay Schools." (Dkt. 1, ¶ 3).
4. Further, the allegations in the complaint show that Mr. Plumb is being sued for acts or omissions occurring in the scope of his employment with Carmel Clay Schools.
5. As a result, any claim against Mr. Plumb is barred under I.C. § 34-13-3-5(b).
6. If the plaintiff somehow claims that Mr. Plumb was not acting within the scope of his employment with Carmel Clay Schools, then she has failed to make the requisite allegations under Ind. Code § 34-13-3-5(c) to sue a public employee personally.

7. Either way, Mr. Plumb is entitled to dismissal.

WHEREFORE, Mr. Plumb respectfully requests that the Court dismiss him from this lawsuit under Fed. R. Civ. Proc. 12(b)(6), and grant all other just and proper relief.

Respectfully submitted,

BECKMAN LAWSON, LLP

By: /s/ Matthew J. Elliott
Matthew J. Elliott, #21242-02
melliott@beckmanlawson.com
201 West Wayne Street
Fort Wayne, IN 46802
Telephone: (260) 422-0800
Facsimile: (260) 420-1013
ATTORNEY FOR DEFENDANT
CHRIS PLUMB

CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of April, 2020, the undersigned filed this document on the Court's CM/ECF system, which in turn generated a notice to:

Jonathan Little
jon@slawfirm.com

Jessica Wegg
jessica@slawfirm.com

Jessica Williams Schnelker
jschnelker@cchalaw.com

Liberty L. Roberts
lroberts@cchalaw.com

Samantha A. Huettner
samantha@metzgerrosta.com

Tammy J. Meyer
tammy@metzgerrosta.com

/s/ Matthew J. Elliott
Matthew J. Elliott
Attorney for Defendant Chris Plumb